

Paul J. Andre (Bar No. 196585)
pandre@perkinscoie.com
Esha Bandyopadhyay (Bar No. 212249)
bande@perkinscoie.com
Perkins Coie LLP
101 Jefferson Drive
Menlo Park, California 94025-1114
Phone: (650) 838-4370
Fax: (650) 838-4350

Scott T. Wilsdon (pro hac vice)
wilson@yarmuth.com
Jeremy E. Roller (pro hac vice)
jroller@yarmuth.com
Yarmuth Wilsdon Calfo PLLC
925 Fourth Avenue, Suite 2500
Seattle, Washington 98104
Phone: (206) 516-3800
Fax: (206) 516-3888

Attorneys for Plaintiff
MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

INTRAX GROUP, INC., d/b/a, SURPLUS
COMPUTERS, a California corporation;
MICHAEL MAK, an individual; and JOHN
DOES 1-5,

Defendants.

No. 07-CV-01840-CW

[PROPOSED] STIPULATED
PROTECTIVE ORDER

IT IS HEREBY STIPULATED and agreed by and between counsel for Plaintiff
Microsoft Corporation ("Microsoft") and Defendant Michael Mak ("Mak") that the terms and
conditions of this Stipulated Protective Order shall be entered as follows:

1. This Stipulated Protective Order shall be applicable to and govern all
depositions, documents produced in response to requests for production of documents,

1 answers to interrogatories, responses to requests for admissions and all other discovery taken
2 pursuant to the Federal Rules of Civil Procedure, as well as all documents produced by either
3 party in response to informal discovery requests, and testimony adduced at trial, matters in
4 evidence and computerized records (collectively, "RECORDS") which the disclosing party
5 designates as "CONFIDENTIAL MATERIAL" or "RESTRICTED MATERIAL" hereafter
6 furnished, directly or indirectly, by or on behalf of any party in connection with this action.

7 2. In designating RECORDS as "CONFIDENTIAL MATERIAL" or
8 "RESTRICTED MATERIAL," a party shall make such a designation of CONFIDENTIAL
9 MATERIAL or RESTRICTED MATERIAL only for RECORDS which that party in good
10 faith believes (i) contain trade secret or other confidential, competitive or proprietary business
11 information used by it in, or pertaining to, its business which the party takes appropriate
12 efforts to keep confidential, (ii) contain confidential personal or financial information which
13 the party takes appropriate steps to keep confidential, or (iii) contain other information which
14 the party is otherwise required to keep confidential by agreement or law. For a designation of
15 RECORDS as "RESTRICTED MATERIAL," the party must additionally believe in good
16 faith that the RECORDS must be protected from disclosure to the parties themselves in this
17 litigation and must be subject to the restricted disclosure provided for below.

18 CONFIDENTIAL MATERIAL and RESTRICTED MATERIAL shall be used solely for the
19 purpose of conducting this litigation and not for any other purpose.
20

21 3. RECORDS designated as CONFIDENTIAL MATERIAL may be disclosed
22 only to the following persons:

23 a. the attorneys working on this action on behalf of any party, including
24 in-house attorneys;

25 b. any paralegal assistants, stenographic and clerical employees working
26 under the direct supervision of such counsel;
27
28

1 c. any parties to this action who are individuals, and the employees,
2 directors or officers of parties to this action who are corporations or partnerships, to
3 the extent necessary to further the interest of the parties in this litigation;

4 d. any person not employed by a party who is expressly retained or sought
5 to be retained by any attorney described in paragraph 3(a) to assist in preparation of
6 this action for trial, with disclosure only to the extent necessary to perform such
7 work;

8 e. any witnesses who appear for deposition or trial in this matter, during
9 the course of their testimony, upon the witness being advised of the need and
10 agreeing to keep the RECORDS confidential; and

11 f. the Court.

12 4. RECORDS designated as "RESTRICTED MATERIAL" may be disclosed
13 only to the following persons:

14 a. the attorneys working on this action on behalf of any party, including
15 in-house attorneys;

16 b. any paralegal assistants, stenographic and clerical employees working
17 under the direct supervision of such counsel, with disclosure only to the extent
18 necessary to perform their work in connection with this matter;

19 c. any person not employed by a party who is expressly retained or sought
20 to be retained by any attorney described in paragraph 4(a) to assist in preparation of
21 this action for trial, with disclosure only to the extent necessary to perform such work;

22 d. any witnesses who appear for deposition or trial in this matter, during
23 the course of their testimony, upon the witness being advised of the need and agreeing
24 to keep the RECORDS confidential; and

25 e. the Court.

26 5. The persons described in paragraphs 3(d) and 4(c) shall have access to the
27 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL once they have been made
28

1 aware of the provisions of this Order and have manifested their assent to be bound thereby by
2 signing a copy of the annexed "ACKNOWLEDGMENT." A list shall be prepared by counsel
3 for the parties hereto of the names of all such persons to whom CONFIDENTIAL
4 MATERIAL or RESTRICTED MATERIAL is disclosed, or to whom the information
5 contained therein is disclosed, and such list shall be available for inspection by the Court and
6 opposing counsel upon request. The other persons described in paragraphs 3 and 4 shall have
7 access to the CONFIDENTIAL MATERIAL and RESTRICTED MATERIAL pursuant to the
8 terms of this Order without signing a copy of the annexed "ACKNOWLEDGEMENT."

9 Similar but separate lists shall also be prepared with respect to CONFIDENTIAL
10 MATERIAL or RESTRICTED MATERIAL provided by third parties. At the time of the
11 termination of this lawsuit by settlement, judgment or otherwise, the parties hereto shall
12 provide other counsel with a copy of the pertinent aforementioned lists upon request. The
13 persons receiving CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL are
14 enjoined from disclosing it to any other person, except in conformance with this Order. This
15 Stipulation will not require the disclosure of experts other than by Local Rule, Federal Rule of
16 Civil Procedure, and/or Court Order.

17
18 6. Each individual who receives any CONFIDENTIAL MATERIAL or
19 RESTRICTED MATERIAL hereby agrees to subject himself/herself to the jurisdiction of this
20 Court for the purpose of any proceedings relating to the performance under, compliance with
21 or violation of this Order.

22 7. The recipient of any CONFIDENTIAL MATERIAL or RESTRICTED
23 MATERIAL that is provided under this Order shall maintain such RECORDS in a secure and
24 safe area and shall exercise the same standard of due and proper care with respect to the
25 storage, custody, use and/or dissemination of such RECORDS as is exercised by the recipient
26 with respect to its own proprietary information.

27 8. Parties shall designate CONFIDENTIAL MATERIAL or RESTRICTED
28 MATERIAL as follows:

1 a. In the case of RECORDS produced pursuant to Rules 26 and 34 of the
2 Federal Rules of Civil Procedure, interrogatory answers, responses to requests for
3 admissions, and the information contained therein, designation shall be made by
4 placing the following legend on any such RECORD prior to production:
5 “CONFIDENTIAL MATERIAL” or “RESTRICTED MATERIAL.” In the event that
6 a party inadvertently fails to stamp or otherwise designate a RECORD as
7 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL at the time of its
8 production, that party shall have five (5) business days after discovery of such error to
9 so stamp or otherwise designate the RECORD.

10 b. In the case of depositions, designation of the portion of the transcript
11 (including exhibits) which contains CONFIDENTIAL MATERIAL or RESTRICTED
12 MATERIAL shall be made by a statement to such effect on the record in the course of
13 the deposition or, upon review of such transcript by counsel for the party to whose
14 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL the deponent has had
15 access, said counsel shall designate within fourteen (14) days after counsel’s receipt of
16 the transcript.

17 c. Transcripts of depositions will not be filed with the Court unless it is
18 necessary to do so for purposes of trial, motions for summary judgment, or other
19 matters. If a deposition transcript is filed and if it contains CONFIDENTIAL
20 MATERIAL or RESTRICTED MATERIAL, the transcript shall bear the appropriate
21 legend on the caption page and shall be filed under seal.

22 9. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL
23 MATERIAL or RESTRICTED MATERIAL designation at the time made, and failure to do
24 so shall not preclude a subsequent challenge thereto. In the event that any party to this
25 litigation disagrees at any stage of these proceedings with such designation, such party shall
26 provide to the producing party written notice of its disagreement with the designation. The
27 parties shall first try to dispose of such dispute in good faith on an informal basis. If the
28

1 dispute cannot be resolved, the party challenging the designation may request appropriate
2 relief from the Court, but in any event, such relief from the Court shall not be requested
3 before ten (10) days after the producing party is served with the required notice. The burden
4 of proving that RECORDS have been properly designated as CONFIDENTIAL MATERIAL
5 or RESTRICTED MATERIAL shall be on the party making such designation.

6 10. The Clerk of the Court is directed to maintain under seal all RECORDS and all
7 transcripts of deposition testimony filed with this Court in this litigation by any party which
8 are, in whole or in part, designated as CONFIDENTIAL MATERIAL or RESTRICTED
9 MATERIAL, including all pleadings, deposition transcripts, exhibits, discovery responses or
10 memoranda purporting to reproduce or paraphrase such RECORDS. The person filing such
11 RECORDS shall designate to the Clerk that all or a designated portion thereof is subject to
12 this Order and is to be kept under seal, except that upon the default of the filing party to so
13 designate, any party may do so.

14 11. In the event that any CONFIDENTIAL MATERIAL or RESTRICTED
15 MATERIAL is used in any court proceedings in connection with this litigation, it shall not
16 lose its CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL status through such
17 use, and the parties shall take all steps reasonably required to protect its confidentiality during
18 such use.

19 12. Nothing in this order shall preclude any party to the lawsuit, their attorneys or
20 any other person from disclosing or using, in any manner or for any purpose, any RECORDS
21 not obtained in this lawsuit, if such RECORDS are lawfully obtained from a third party, even
22 though the same RECORDS may have been produced in discovery in this lawsuit and
23 designated as CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL.

24 13. Nothing in this order shall preclude any party to the lawsuit or their attorneys
25 (a) from showing RECORDS designated as CONFIDENTIAL MATERIAL or
26 RESTRICTED MATERIAL to an individual who either prepared or reviewed the RECORDS
27 prior to the filing of this action, or (b) from disclosing or using, in any manner or for any
28

1 purpose, RECORDS from the party's own files which the party itself has designated as
2 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL.

3 14. Within sixty (60) days of the termination of litigation between the parties, all
4 CONFIDENTIAL MATERIAL and RESTRICTED MATERIAL, and all copies thereof,
5 except such copies which have been filed with the Court, utilized in accordance with this
6 Order, or which are and will continue to be maintained in a secure place pursuant to the
7 continuing obligations of this Order, shall be returned to the party which produced it or shall
8 be destroyed.

9 15. Except as specifically provided herein, the terms, conditions and limitations of
10 this Order shall survive the termination of this action at the option of the designating party.

11 16. This Order is without prejudice to the right of any party to seek relief from the
12 Court, upon good cause shown, from any of the provisions contained in paragraphs 1 through
13 13, inclusive hereof.
14
15
16 /
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED this 2nd day of November, 2007

2
3
4 PERKINS COIE LLP

LAW OFFICES OF STEVEN A. DILLICK

5 By: /s/ Esha Bandyopadhyay
6 Paul J. Andre (Bar No. 196585)
7 Esha Bandyopadhyay (Bar No. 212249)
8 101 Jefferson Drive
9 Menlo Park, California 94025-1114
10 Phone: (650) 838-4370
11 Fax: (650) 838-4350
12 Email: pandre@perkinscoie.com
13 bande@perkinscoie.com

By: /s/ Steven A. Dillick
Steven A. Dillick (Bar No. 111419)
One Maritime Plaza, Suite 1040
San Francisco, California 94111
Phone: (415) 399-8777
Fax: (415) 399-8778
Email: sdillick@ix.netcom.com

Attorney for Defendants Intrax Group, Inc.
d/b/a Surplus Computers and Michael Mak

11 OF COUNSEL:

12 YARMUTH WILSDON CALFO PLLC

13 By: /s/ Scott T. Wilsdon
14 Scott T. Wilsdon (*pro hac vice*)
15 Jeremy E. Roller (*pro hac vice*)
16 925 Fourth Avenue, Suite 2500
17 Seattle, Washington 98104
18 Phone: (206) 516-3800
19 Fax: (206) 516-3888
20 Email: wilsdon@yarmuth.com
21 jroller@yarmuth.com

22
23 Attorneys for Plaintiff Microsoft
24 Corporation

25
26 IT IS SO ORDERED:

27 Dated: _____, 2007

28

United States District Court Judge

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that he/she has read the PROTECTIVE ORDER which was entered by the Court on _____, 2007, in *Microsoft Corp. v. Intrax Group, Inc., et al.*, Case No. 07-CV-01840-CW, that he/she is one of the persons contemplated in paragraph 3 and 4 thereof as authorized to receive disclosure of RECORDS designated CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL by any of the parties or by third parties, and that he/she fully understand and agrees to abide by the obligations and conditions of the Protective Order. The undersigned further consents to be subject to the jurisdiction of the United States District Court for the Northern District of California for purposes of any proceedings relating to performance under, compliance with or violation of the above-described Order.

Dated: _____, 200__